

1 PETER B. MORRISON (SBN 230148)  
peter.morrison@skadden.com  
2 VIRGINIA F. MILSTEAD (SBN 234578)  
virginia.milstead@skadden.com  
3 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
300 South Grand Avenue, Suite 3400  
4 Los Angeles, California 90071  
Telephone: (213) 687-5000  
5 Facsimile: (213) 687-5600

6 JOHN NEUKOM (SBN 275887)  
john.neukom@skadden.com  
7 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
525 University Avenue, Suite 1400  
8 Palo Alto, California 94301  
Telephone: (650) 470-4500  
9 Facsimile: (650) 470-4570

10 Attorneys for Defendants  
Ripple Labs Inc., XRP II, LLC, Bradley  
11 Garlinghouse, Christian Larsen, Ron Will,  
Antoinette O'Gorman, Eric van Miltenburg,  
12 Susan Athey, Zoe Cruz, Ken Kurson, Ben  
Lawsky, Anja Manuel, and Takashi Okita  
13

14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 AVNER GREENWALD, individually and on ) CASE NO.: 4:18-cv-04790-PJH  
behalf of all others similarly situated, )  
17 ) (1) EX PARTE MOTION TO SHORTEN  
Plaintiff, ) TIME ON MOTION TO STAY AND TO  
v. ) STAY REMAND ORDER PENDING  
18 ) MOTION TO STAY;  
19 ) (2) DECLARATION OF PETER B.  
RIPPLE LABS INC., et al., ) MORRISON; and  
20 ) (3) [PROPOSED] ORDER (lodged under  
Defendants. ) separate cover).  
21 )  
22 ) Courtroom: 3  
23 ) Judge: Hon. Phyllis J. Hamilton  
24 )  
25 )  
26 )  
27 )  
28 )

## **STATEMENT OF RELIEF SOUGHT**

2 On October 15, 2018, this Court issued an order remanding this matter, which Defendants had  
3 removed pursuant to the Class Action Fairness Act (“CAFA”), to the San Mateo County Superior  
4 Court (“Remand Order”). (Dkt. No. 23.) On October 16, 2018, the clerk of the Court issued a notice  
5 remanding this matter to San Mateo County Superior Court (“Notice”). (Dkt. No. 24.) Pursuant to 28  
6 U.S.C. § 1453(c)(1), Defendants have ten days after the entry of the Remand Order to apply to the  
7 United States Court of Appeals for the Ninth Circuit to appeal the Remand Order. Defendants intend  
8 to file such an application within the time specified. In the interim, Defendants are filing in  
9 conjunction herewith a motion seeking to stay this Court’s Remand Order and certified mailing of the  
10 Notice pending appeal. To allow time for Defendants to seek such relief before the state court  
11 reacquires and exercises jurisdiction, Defendants seek, on an *ex parte* basis, (i) an order shortening  
12 time on Defendants’ motion to stay the Remand Order and certified mailing of the Notice; and (ii) an  
13 immediate stay of the Remand Order and certified mailing of the Notice pending briefing and decision  
14 on Defendants’ motion to stay.

15 | Dated: October 17, 2018

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: \_\_\_\_\_ /s/*Peter B. Morrison*  
Peter B. Morrison  
Attorneys for Defendants

## **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to Civil Local Rules 6-3 and 7-10 and Rule 6(c)(1)(A), (C) of the Federal Rules of  
3 Civil Procedure, Defendants Ripple Labs Inc., XRP II, LLC, Bradley Garlinghouse, Christian Larsen,  
4 Ron Will, Antoinette O’Gorman, Eric van Miltenburg, Susan Athey, Zoe Cruz, Ken Kurson, Ben  
5 Lawsky, Anja Manuel, and Takashi Okita (collectively, “Defendants”) respectfully submit this *ex*  
6 *parte* motion (i) to shorten time on Defendants’ motion to stay this Court’s October 15, 2018 order  
7 remanding this action (“Remand Order”) (Dkt. No. 23) and the certified mailing of the October 16,  
8 2018 Notice Remanding Case to San Mateo County Superior Court (“Notice”) (Dkt. No. 24) and (ii)  
9 for an immediate stay of the Remand Order and certified mailing of the Notice pending briefing on  
10 Defendants’ motion to stay.

11        *Ex parte* relief is necessary and proper. See Fed. R. Civ. P. 6(c)(1)(C) (a party may for good  
12 cause apply *ex parte* for a court order setting a different time for the service of a written motion).  
13 Because Defendants removed this action pursuant to the Class Action Fairness Act (“CAFA”),  
14 Defendants have 10 days after entry of the Remand Order to file an application with the United States  
15 Court of Appeals for the Ninth Circuit to appeal the Remand Order. See 28 U.S.C. § 1453(c)(1). This  
16 means Defendants’ application, which they intend to file, is due by October 25, 2018. In the  
17 meantime, Defendants are requesting a stay of the Court’s Remand Order pending appeal so that the  
18 state court does not assume and exercise jurisdiction while such appeal is pending. See Fed. R. App.  
19 P. 8(a)(1) (providing that a party “must ordinarily move first in the district court” for “a stay of the  
20 judgment or order of a district court pending appeal”); see also Broadway Grill, Inc. v. Visa Inc., 2016  
21 WL 6069234, at \*2 (N.D. Cal. Oct. 17, 2016) (noting that “[b]ecause the remand order is appealable  
22 under CAFA, this court retains jurisdiction over the request to stay the case”).

23 However, pursuant to Local Rule 7-2, Defendants are required to provide 35 days' notice for a  
24 motion to stay this Court's Remand Order and the certified mailing of the Notice pending Defendants'  
25 appeal. Thus, if the Court does not grant relief from the Remand Order and certified mailing of the  
26 Notice on an expedited basis, the San Mateo County Superior Court may attempt to exercise  
27 jurisdiction over this matter before Defendants even have the opportunity to have their motion to stay  
28 heard or to file their application to appeal with the Court of Appeals. See 28 U.S.C. § 1447(c)

1 (providing that state court may proceed with a case after the clerk of the court mails a certified copy of  
 2 the remand order).

3 Absent immediate relief, the state court may exercise jurisdiction prematurely, and Defendants'  
 4 ability to seek relief from this Court or from the Court of Appeals may become compromised or moot.  
 5 To avoid such irreparable harm, Defendants request that the Court grant Defendants' *ex parte*  
 6 application. See Broadway Grill, 2016 WL 6069234, at \*1 (noting that the court granted a temporary  
 7 stay of its remand order until defendant's motion to stay could be briefed on an expedited schedule).

8 As set forth in the [Proposed] Order lodged in conjunction with this *ex parte* motion,  
 9 Defendants are requesting that:

- 10 • Plaintiff file an opposition to Defendants' motion to stay by Friday, October 19, 2018;  
 11 Defendants' file their reply by Monday, October 22, 2018; and that the Court vacate the  
 12 hearing Defendants noticed in connection with their motion to stay and decide the  
 13 matter on the papers.
- 14 • Defendants are also requesting an immediate stay of the Remand Order and certified  
 15 mailing of the Notice pending briefing and decision on Defendants' motion to stay.  
 16 Absent such a temporary stay, the state court could seek to assert jurisdiction before  
 17 Defendants' motion to stay is even heard by this Court.

18 Should the Court be inclined to grant the temporary stay of its Remand Order as requested  
 19 herein, Defendants would welcome a longer briefing schedule convenient for the Court and the parties.  
 20 The currently requested briefing schedule is necessary given the risk that the state court may seek to  
 21 assert jurisdiction before Defendants can be heard and potentially rendering the CAFA appeal moot.

22 Dated: October 17, 2018

23 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

24 By: \_\_\_\_\_ */s/Peter B. Morrison*  
 25 Peter B. Morrison  
 Attorneys for Defendants

26

27

28

## **DECLARATION OF PETER B. MORRISON**

2 1. I am an attorney admitted to practice before the courts of the State of California and  
3 have been admitted to this Court. I am a partner in the law firm of Skadden, Arps, Slate, Meagher &  
4 Flom LLP, which is counsel of record for Defendants Ripple Labs Inc. (“Ripple”), XRP II, LLC  
5 (“XRP II”), Bradley Garlinghouse, Christian Larsen, Ron Will, Antoinette O’Gorman, Eric van  
6 Miltenburg, Susan Athey, Zoe Cruz, Ken Kurson, Ben Lawsky, Anja Manuel, and Takashi Okita  
7 (collectively “Defendants”) in the above-captioned matter. I submit this declaration in support of  
8 Defendants’ *Ex Parte* Motion to Shorten Time On Motion To Stay And To Stay Remand Order  
9 Pending Motion To Stay. This declaration is based on my own personal knowledge, and if called upon  
10 to do so, I could and would testify competently thereto.

11 2. Because Defendants removed this action pursuant to the Class Action Fairness Act  
12 (“CAFA”), Defendants have 10 days after entry of the Remand Order to file an application with the  
13 United States Court of Appeals for the Ninth Circuit to appeal the Remand Order. See 28 U.S.C.  
14 § 1453(c)(1). Defendants intend to file such an application by the deadline of October 25, 2018, and,  
15 in the meantime, seek to preserve this Court’s jurisdiction by requesting a stay of the Court’s Remand  
16 Order pending appeal.

17       3.     However, pursuant to Local Rule 7-2, Defendants are required to provide 35 days'  
18 notice for a motion to stay this Court's Remand Order and the certified mailing of the Notice pending  
19 Defendants' appeal. Thus, if the Court does not grant relief from the Remand Order and certified  
20 mailing of the Notice on an expedited basis, the San Mateo County Superior Court may attempt to  
21 exercise jurisdiction over this matter before Defendants even have the opportunity to have their motion  
22 to stay heard or to file their application to appeal with the Court of Appeals.

23 4. Absent immediate relief, the Court may be deprived of jurisdiction prematurely, and  
24 Defendants' ability to seek relief from this Court or from the Court of Appeals may become moot. To  
25 avoid such irreparable harm, Defendants request that the Court grant Defendants' *ex parte* application.

26 5. On October 16, 2018, I reached out to counsel for Plaintiff via email, inquiring whether  
27 Plaintiff would stipulate to a stay pending appeal or to a shortened briefing schedule on Defendants'  
28 motion to stay and an immediate stay pending decision on Defendants' motion to stay. Plaintiff's

1 counsel informed me that he would oppose the motion to stay but would consider stipulating to a  
2 shortened briefing schedule. Plaintiff's counsel requested that I send him a proposed schedule, and I  
3 sent him the proposed schedule set forth in Defendants' memorandum of points and authorities and  
4 [proposed] order.

5 6. On October 17, 2018, Plaintiff's counsel responded that he could not agree to the  
6 proposed schedule or a temporary stay pending a decision on Defendants' motion to stay. Plaintiff's  
7 counsel offered to discuss the requested relief again once the motions were filed.

8 I declare under penalty of perjury under the laws of the State of California and the United  
9 States of America that the foregoing is true and correct.

10 Executed on October 17, 2018 in Los Angeles, California.

11  
12 By: /s/ Peter B. Morrison  
13 Peter B. Morrison  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28